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CHARLES ELMORE COMPANY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1949

No. 378

KENNETH J. MULLANE, as Special Guardian and
Attorney, etc.,

Appellant,

v.

CENTRAL HANOVER BANK AND TRUST COMPANY,
as Trustee, etc., *et al.*

APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

**BRIEF OF RESPONDENT SPECIAL GUARDIAN
AND ATTORNEY FOR INFANTS, ETC. HAVING
AN INTEREST IN TRUST PRINCIPAL**

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Attorney, Respondent,
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Preliminary Statement

Subdivision 10 of Section 100-c of the New York Banking Law (Appx., p. 19) calls upon every trust company maintaining a common trust fund to file an account of its proceedings not less than twelve nor more than fifteen months after the date on which the fund is established and every three years thereafter. In accordance with this accounting requirement, the respondent-trustee filed its account on March 28, 1947 (R. 4). In its petition (R.

14) simultaneously filed, the respondent-trustee requested, among other things, an order directing publication of the citation in the manner and in the form prescribed by Subdivision 12 of Section 100-c of the Banking Law (Appx., p. 20). Such an order was made on March 28, 1947 and the citation (R. 24) subsequently was published once each week for four successive weeks in the New York Law Journal (R. 175-176).

In a citation required to be published on the occasion of an accounting by the trustee of a common trust fund, it is a requirement under the statute that the citation list each of the participating estates, trusts or funds in the manner prescribed by the statute for the proper identification of such participating estates, trusts or funds. It is also a requirement under the statute that the citation contain the name of each person acting in a fiduciary capacity with the trust company in the management of each such estate, trust or fund and that the individual parties who are beneficially interested in the common trust fund, or who are so interested in the estates, trusts or funds making up that fund, be cited by addressing the citation to such parties generally without naming them therein (Subdivisions 11 and 12, Section 100-c, New York Banking Law, Appx., pp. 19 and 20).

The procedure thus outlined was followed by the present respondent-trustee in this proceeding to settle its account as the fiduciary having superintendence of the common trust fund here involved. The appellant is special guardian and the attorney for a number of persons who are entitled to share in any income from the common trust fund. He questions the jurisdictional sufficiency of the notice that was given to those persons in accordance with the requirements of the statute.

As appears in the appellant's brief (pp. 1-2) his position was repudiated by the Surrogate's Court of the

County of New York, the Appellate Division of the New York Supreme Court and by the New York Court of Appeals. The appellant now asks this Court to review the decision of the New York Courts. It is our submission that, if this Court decides to entertain the present appeal rather than dismiss it for want of jurisdiction, the decision of the New York Courts should here be affirmed.

Opinions Delivered in the Courts Below

The opinion delivered by the Surrogate (R. 105-120) is reported in 75 N. Y. Supp. 2d 397 (not officially reported).

The dissenting opinion delivered in the Appellate Division of the Supreme Court (R. 103-168) is reported in 274 N. Y. App. Div. 772.

These are the only opinions delivered below.

Summary Statement of the Case

This respondent deems it unnecessary to make any summary statement of the case beyond the preliminary statement thereof (this brief, p. 1) and the statement of the case supplied by the respondent-trustee in its brief.

Summary of Argument

Subdivision 12 of Section 100-c of the New York Banking Law satisfies every requirement of due process of law in the way of notice to persons interested in income received on units of participation in the common trust fund.

POINT I

Subdivision 12 of Section 100-c of the New York Banking Law satisfies every requirement of due process of law in the way of notice to persons interested in income received on units of participation in the common trust fund.

We turn now to the constitutional question which the appellant raises, that is to say: Whether the statute should be struck down because it fails to prescribe the necessity of communicating reasonable notice of the common trust fund accounting proceeding to persons beneficially interested in income received on units of participation in such fund.

Perhaps consideration first should be given to the claim of the appellant that the affirmative answer made by the New York Court of Appeals to one of the questions certified to it by the Appellate Division (R. 232) "necessarily" discloses a ruling by that Court that the present proceeding is partly a proceeding *in personam* (Appellant's brief, pp. 29-30). This highly technical claim is wholly without substance. Indeed, the appellant is seeking on this appeal to have that selfsame answer of the Court of Appeals repudiated (See the Specification of Errors to Be Urged, Appellant's brief, p. 12). It must be said, moreover, that this contention of the appellant is somewhat confused by his express disavowal of any claim that in the present situation the requirements of due process necessitate personal service upon anyone including his wards (Appellant's brief, p. 13). At all events, it is obvious that the appellant has put upon the decision of the Court of Appeals an extremely hypercritical construction. It is our submission, therefore, that this contention of the appellant should be summarily rejected.

The question of the constitutional sufficiency of the notice prescribed by the statute in question is determinable by

analysis of the proceeding to settle the account of the trust company and by considering whether it is reasonably probable that persons beneficially interested in the subject matter of the accounting proceeding will be apprised of the institution of such proceeding. Hence, it is necessary first to determine whether the proceeding under consideration is one *in personam* or *in rem* or *quasi in rem*.

The major objective envisaged by a common trust fund is the common advantage resulting from the administration of numerous participating trust interests as parts of a single fund. This concept of the common trust fund requires that such fund be dealt with as an entity apart from the estates, trusts or funds whose moneys are invested in it (*Matter of Bank of New York*, 189 N. Y. Misc. Rep. 459, 463; *Matter of Continental Bank & Trust Company of New York*, 189 N. Y. Misc. Rep. 795, 797; *Matter of Hoagland*, 194 N. Y. Misc. Rep. 803, 811, *affd.* 272 N. Y. App. Div. 1040, *affd.* by the Court of Appeals, 297 N. Y. 920).

In *Matter of Hoagland*, *supra*, the trustee of a testamentary trust purchased units of participation in a common trust fund administered by the Bank of New York as trustee. This investment was objected to upon the ground that within the common fund were bonds which had been purchased at premiums. It was the law prevailing at the time of the testator's death that, if an investment were made by the trustee directly in bonds purchased at premiums, amortization of the premiums was required. Within the common fund, however, amortization of such premiums would have been illegal because it would have been in direct opposition to the Plan of Operation of the fund. It was argued by the objectant that the Hoagland trust, as owner of units of participation in the common trust fund, had some kind of ownership which fastened upon the assets within the common trust fund itself. Accordingly, it was concluded by the objectant that either the investment in the units of participation was wholly unau-

thorized, or, if authorized, some form of amortization should be applied to income received on the units of participation owned by the Hoagland trust. The Surrogate's Court rejected these arguments. That Court cited earlier decisions on the subject (*Matter of Bank of New York* and *Matter of Continental Bank & Trust Company, supra*), and decided that the question of amortization is solely a matter within the administration of the common trust fund itself. These decisions make it evident that the common trust fund is a *res* distinct from every participant holding units of participation therein. Furthermore, a proceeding for judicial settlement of a trustee's accounts has for its purpose the determination of the status or condition of, or title to specific property (*Matter of Horton*, 217 N. Y. 363, 368). This is the definition of a proceeding *in rem*, its purpose being, where trust property is the subject of an accounting, to secure a decision by a court of competent jurisdiction as to whether the account given by the trustee in respect of the property placed in his charge is right in those respects in which the law makes formal requirements.

The only purpose of an accounting by the trustee of a common trust fund is to enable a court of competent jurisdiction to scrutinize the trustee's management of the fund and to put at rest any questions with respect to such fund properly arising within the fund. The decree rendered in such proceeding may have a limited effect upon persons beneficially interested in the fund because an adjudication upon the status, or condition of, or title to, specific trust property necessarily may have collateral consequences affecting persons who own or have an interest in the property. This is true, however, in every instance where an action or proceeding is taken *in rem*. But where the direct object of the action or proceeding is to obtain an adjudication upon the status of property, the judgment or decree rendered therein cannot be construed as an adjudication upon the status of personal rights existing between individuals.

"Judgments *in rem* determine the title and status of property subject to the Court's jurisdiction. In acting on property, judgments *in rem* affect persons by determining their right to or interest in property. This is the limit of their effect on persons * * *

"Even plaintiffs and persons who had a right to appear because their interests were affected are not bound in later actions by any findings of fact or holdings made in an action *in rem*, even though issues specifically litigated therein should arise again, if in the later action the Court has jurisdiction *in personam* or jurisdiction over different property. It was indicated earlier that any issues might be litigated or any relief given in an action *in rem* if the holding on the issue or the relief given affected the *res*. The holding on issues litigated and the relief given are effective only for the purpose of determining the title or status of the property and have no effect on the personal rights between the parties.

"* * * the persons whose interests in property are affected by actions *in rem* are not concluded by the judgment *in rem* should they sue the person who was plaintiff in the *in rem* action on some issue litigated in that action." (George B. Fraser, Jr. *Actions in Rem*; 34 Cornell Law Quarterly, pp. 46-47.)

It is apparent, moreover, that a decree settling the account of the trustee of a common trust fund does not operate to settle the accounts of underlying estates, trusts or funds (*Matter of Bank of New York*, 189 N. Y. Misc. Rep. 459, 470). Hence, the settlement of the account of the trustee of a common trust fund does not preclude the owners of participating interests from subsequently attacking the propriety of an investment in units of participation in such fund (*Matter of Hoagland*, 194 N. Y. Misc. Rep. 803, 810-811).

These considerations clarify the meaning of Subdivision 14 of Section 100-c of Banking Law (Appx., p. 22) by demonstrating that this Subdivision of the statute was intended to express the consequence of a decree in an *in rem* proceeding. The pertinent text of the statute is as follows:

“Subject to the limitations set forth in subdivision nine hereof, the decree in such proceeding unless reversed or modified on appeal shall be thereafter binding and conclusive in respect of any matter set forth in the account settled by such decree in all courts upon all parties having or who may thereafter have any interest in such a Common Trust Fund or in any estate, trust or fund held by such trust company either alone or in conjunction with another or others.”

We now come to the question whether the notice of the present proceeding given to parties interested in income in the common trust fund involved, which notice admittedly complied with all requirements of the statute, was adequate to satisfy the requirements of due process of law.

It is fundamental that a state, in the exercise of its exclusive jurisdiction to determine rights to property within its borders, may provide by statute the manner of giving notice to those whose rights are likely to be affected (*Arndt v. Griggs*, 134 U. S. 316, 320-321). This rule applies whether the persons so served are residents or non residents of the state (*id.*). It is fundamental, moreover, that “All that is then required is that the service shall be reasonably adequate to assure notice of the proceeding to those whose rights are to be affected.” (*City of New York v. Wright*, 243 N. Y. 80, 84.)

We know that “Whether property is taken without due process of law depends upon the nature of each particular case. If it be such an exercise of power ‘as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those

maxims prescribed for the classes to which the one in question belongs,' it is due process of law. Cooley on Const. Lim. (7th Ed.) 506." (*Leigh v. Green*, 193 U. S. 79, 87-88).

We know too, that although the power of the legislature to prescribe the form of notice and the means to be employed for its service is not absolute, yet it is certain that only in a clear case of insufficiency will a notice authorized by the legislature be set aside (*Goodrich v. Ferris*, 214 U. S. 71, 81; *Bellingham Bay Company v. New Watcom*, 172 U. S. 314, 318-319).

The form of notice prescribed by the statute was intended to accomplish two results.

In the first place, the notice was intended as a means of actually notifying persons affected. For this reason it was set against a background of an earlier notice which the trustee is required to give at the time of making the first investment in a unit or units of participation in the common trust fund (Subdivision 9, Section 100-c of the New York Banking Law, Appx., p. 17). Accompanying this earlier notice, there must be a copy of the provision of the statute which describes the manner in which accountings at future times will be made. Such earlier notice is a material circumstance in testing the sufficiency of the notice which must be published at the time that the actual accounting proceeding is instituted. Considered against the background of the earlier notice, a subsequent notice by publication is reasonably calculated to reach those interested in the proceeding.

In the second place, the objective which the legislation had in view consists in avoidance of such notice requirements as would tend to make the common trust fund uneconomical or unworkable. The whole purpose of common trust funds is to afford a safe means for pooling relatively small amounts of property to the end that they may be safely invested at a minimum of risk. From the standpoint

of the corporate trustee's own interests, the advantage of the fund chiefly consists in its simplification of many problems of trust administration. The corporate trustee gets no other reward from the common trust fund.

That the beneficial owners of the fund may get the maximum benefit therefrom it is indispensable that the incidental costs and expenses arising from its administration shall be relatively slight. From the standpoint of the interests of the corporate trustee, the device itself should be readily administered. Requirements for a form of notice such as the appellant demands would slow up the administrative process in settling the accounts of the trustee of the common trust fund and would greatly increase the necessary volume of legal work to be done in connection with an accounting. Costs would, of course, rise and rise materially in such a situation. It should therefore be considered whether anyone would genuinely benefit from such a policy. It is submitted that nobody would gain.

The provisions with regard to a common trust fund are very far removed from cases where legal acts are performed having a show of taking somebody's property without due process. It would be difficult to conceive of a more carefully protected body of property than that which constitutes a common trust fund. The trustee of the fund is obliged to operate the fund under a plan approved by the Banking Department. Certain obligations are imposed upon the Superintendent of Banks which have the consequence of obliging him to keep the fund under his official eye. The trustee must administer the fund with the express knowledge that it has no choice on the subject of its accountability for its actions. When this proceeding to account actually reaches the Court, the transactions of the trustee, by mandate of the statute (Subdivision 12, Section 100-c, New York Banking Law Appx., p. 21), must be reviewed by competent lawyers selected by the Court, one to investigate transactions from the standpoint of parties

interested in principal, the other to make a similar investigation from the standpoint of all parties having an interest in income. There is in short a high degree of visibility connected with the inception, the administration and the accounting proceedings affecting common trust funds.

To hamper the practical operation of the fund certainly can be the objective of nobody and the Court it is submitted should not disturb the result below on the score of the notice requirements unless the notice provisions supplied by the legislature are shown to be palpably unreasonable in the light of all the facts and circumstances. But the learned appellant has made out no such case of manifest unreasonableness.

When consideration is given to the care of the legislature to provide a notice reaching persons beneficially interested at the time an investment is made, which notice is accompanied by a copy of the applicable law; when it is considered that the notice published on the occasion of an accounting meets all the requisites as to the contents for a proper notice;* and when it is further considered that publication must be made not once but four separate times in the particular newspaper likely to come to the attention of property holders either directly or by way of their lawyers; then it seems clear that the notice provision cannot be called affirmatively unreasonable or a notice not calculated to notify interested parties. Delivery of the notice must be provided for in a reasonable manner, not in the most reasonable manner conceivable. If this be the test—as it is—the notice requirements in the present case are inoffensive to the Constitution.

* The notice must indicate that there is a proceeding involving certain property, the nature of the proceeding, whose interests are to be affected, and the time and place of the hearing. Due process does not require any special form of notice. Anything that reasonably conveys the information may be used (*Fraser supra*, p. 40).

CONCLUSION

If this Court decides that it has jurisdiction of this cause, then the judgment appealed from should be in all respects affirmed.

Respectfully submitted,

JAMES N. VAUGHAN,
Special Guardian and Attorney,
Respondent.

JOHN B. LOUGHRAN,
with him on the brief.

APPENDIX

Sec. 100-c. Common trust funds.

1. For the purpose of investment and reinvestment of moneys received and held by any trust company as executor, administrator, guardian, personal or testamentary trustee, or committee, such trust company, upon receiving permission of the banking board so to do, may establish and maintain one or more common trust funds pursuant to such rules and regulations as may be promulgated by the banking board pursuant to law. In any case where the instrument or the order, decree or judgment under which such moneys are held does not forbid, such trust company either alone or in conjunction with one or more other persons acting with it in any fiduciary capacity, whether such fiduciary capacity arose or was created before or after this act takes effect, may invest and reinvest such moneys or any part thereof received and held by it alone in any fiduciary capacity or by it and such other person or persons in any fiduciary capacity by adding the same to any such common trust fund or funds and by apportioning shares or interest therein to itself or to itself in conjunction with one or more such other persons, in such fiduciary capacity, showing upon its records at all times every such share or interest in such fund or funds; and also may from time to time withdraw from such fund or funds any such share or interest in whole or in part. The net aggregate amount of moneys of any estate, trust or fund invested in any common trust fund or funds shall not at any time exceed twenty-five thousand dollars or such lesser sum as may be fixed as the maximum amount permitted by such rules and regulations as may be promulgated by the banking board: provided, that if the board of governors of the federal reserve system shall authorize such investment in a net aggregate amount in excess of twenty-five thousand dollars in the case of common trust funds subject to

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regulation by such board of governors, the banking board may by regulation authorize such investment to a net aggregate amount exceeding twenty-five thousand dollars but not exceeding the net aggregate amount which may be authorized by the said board of governors or the net aggregate amount of fifty thousand dollars whichever is the lower. No estate, trust or fund shall be permitted to invest in a common trust fund when in contravention of the law of the state or country whose laws govern the administration of such estate, trust or fund. Nothing contained herein shall permit investment in a common trust fund of any trust held by a trust company either alone or with one or more other persons as trustee under any trust instrument wherein at any time the power to revest in the grantor title to any part of the corpus of said trust is vested: (1) in the grantor, either alone or in conjunction with any person, other than the trustee or trustees, not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or (2) in any person, other than the trustee or trustees, not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom.

3. Each common trust fund shall be known either as a legal common trust fund or a discretionary common trust fund. A trust company maintaining a legal common trust fund may invest therein the moneys of any estate, trust or fund which is eligible for investment in any common trust fund pursuant to sub-division one of this section. A trust company maintaining a discretionary common trust fund may invest therein the moneys of any estate, trust or fund where the instrument or order of court under which such estate, trust or fund is held shall authorize the investment of moneys of said estate, trust or fund in any of the following: (a) in a discretionary common trust

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fund; (b) in such investments as the fiduciary thereof may select in the discretion of such fiduciary; (c) generally in investments other than those in which trustees are by law authorized to invest trust funds. Except for uninvested cash balances awaiting investment or kept for the purpose of meeting cash requirements legal common trust funds shall be invested solely in the same kind of securities as those in which savings banks in this state are authorized to invest by subdivisions one, two, three, four, five, seven, ten, eleven, twelve, thirteen, fourteen, fifteen and nineteen of section two hundred thirty-five of the banking law as such section existed upon the first day of January, nineteen hundred forty-three provided that if any investment authorized by any of said subdivisions of said section two hundred thirty-five as the same existed on such date shall cease to be authorized for investment by savings bank any such investment shall thereafter be ineligible as an investment for such common trust funds. A trust company maintaining a discretionary common trust fund may invest the same in such investments as it may select in its discretion.

4. The assets of a common trust fund or funds shall be kept separate and apart from the assets of such trust company, except that any moneys of such fund awaiting investment or distribution may be held temporarily by or on deposit with such trust company. A trust company shall not invest any of its own funds in such a common trust fund nor shall any trust company purchase for such common trust fund any securities from itself or an affiliate. The term "affiliate" shall include any of the following: (a) any corporation of which a bank or trust company directly or indirectly owns or controls either a majority of the voting shares or more than fifty per centum of the number of shares voted for the election of its directors at the last preceding election, or controls in any manner the election of a majority of its directors; (b) any corporation described in

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paragraphs (b), (c), (d), or (e), of subdivision nine of section one hundred three of this chapter as it existed on January first, nineteen hundred forty-three. No investment shall be made for any common trust fund in the securities of any corporation, association, business trust, or similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes or other securities. A common trust fund shall not be deemed a separate trust fund on which commissions or other compensation is allowable and no trust company maintaining such a fund shall make any charge against such fund for the management thereof.

9. At the time of making the first investment of any estate, trust or fund in a common trust fund the trust company maintaining such common trust fund shall send a notice to each person of full age and sound mind whose name and address is known to such trust company at the time of sending such notice and who is then known to it to be or to claim to be included in the following class or classes: (a) those then entitled to share in the income therefrom, and (b) those who would be entitled to share in the principal if the event upon which such estate, trust or fund will become distributable should have occurred at the time of sending such notice. Such notice shall apprise such person that moneys of such estate, trust or fund have been invested in such common trust fund and that from time to time additional moneys of such estate, trust or fund may be invested in such common trust fund without further notice. No further notice of any later investment of additional moneys of such estate, trust or fund in such common trust fund need be sent to any person to whom the notice of an earlier investment therein shall have been sent unless at the date of such

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later investment all prior investment of moneys of said estate, trust or fund in such common trust fund shall have been withdrawn in full. There shall be included in or appended to such notice a copy of the provisions of this section in respect of the sending of such notice and of the judicial settlement of the accounts of such trust company for such common trust fund. To give such notice it shall be sufficient to deposit a copy thereof in a post office or in any mail box regularly maintained by the government of the United States, properly enclosed in a postpaid wrapper addressed to such person at the last post office address furnished by such person to the trust company or if no such address has been so furnished then to the last post office address, if any, known to said trust company. The affidavit of the person mailing such notice shall constitute prima facie proof of the mailing thereof and the affidavit of an officer of the trust company in charge of the estate, trust or fund at the time of the sending of such notice concerning the names of the persons then known to the trust company to be or to claim to be included in the class or classes above mentioned and of the last post office address of each such person, if any, so furnished or known to the trust company shall be prima facie proof of the facts therein set forth. Failure to mail such notice shall not render invalid any investment in such common trust fund. The decree entered in any proceeding instituted for the judicial settlement of an account of the trust company in respect of such common trust fund shall not be conclusive against any person to whom the trust company was required to send such notice but to whom such notice was not sent unless notice of all investments made prior thereto by the estate, trust or fund in which such person is interested shall have been sent to such person at least thirty days prior to the entry of such decree or, if such notice is sent less than thirty

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days prior to the entry of such decree, unless such person shall fail within sixty days after the mailing of such notice to him to apply to vacate the said decree as to him. If any such notice be sent after the institution of a proceeding for the judicial settlement of the account of such trust company with respect to such common trust fund, such notice shall also state the date of each investment of the moneys of the estate, trust or fund in which the person so notified is interested and shall state that such proceeding is pending and the name of the court in which it is pending; or if sent after the entry of the decree in such proceeding it shall state the date of each such investment and shall state that such decree has been entered and the date and place of such entry.

10. Not less than twelve nor more than fifteen months after the date on which a common trust fund is established, and triennially thereafter, each trust company maintaining any such common trust fund shall file an account of its proceedings in respect thereof either in the office of the clerk of the supreme court in the county in which such trust company maintains its principal office or in the office of the surrogate of such county and shall within five days thereafter furnish the superintendent with a copy thereof. Upon filing such an account, such trust company shall file therewith a petition for its judicial settlement and shall proceed with such judicial settlement in the supreme court if the account is filed in the office of a clerk of that court or in the surrogate's court if the account is filed in the office of the surrogate.

11. Such petition shall set forth (a) the name and address of the petitioner; (b) the date on which such common trust fund was established; (c) the name or designation, if any, by which it is known; (d) the date of the judicial settlement of the next prior account filed, if any, relating to such common trust fund, and (e) a list of all

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the participating estates, trusts or funds any part of which shall have been invested in such common trust fund unless such investment shall have been wholly withdrawn therefrom prior to the period covered by such account and such withdrawal shall have been set forth in a prior account. In the case of any such estate, trust or fund, in respect of which another or others are acting jointly with the trust company in a fiduciary capacity, the name of such other or others shall be stated in such list. In such list the participating estates, trusts or funds shall be adequately described by stating: in the case of an investment in behalf of a decedent's estate, the name of the decedent; in the case of an investment in behalf of an infant, the name of the infant; in the case of an investment in behalf of an incompetent, the name of the incompetent; in the case of an investment in behalf of a testamentary trust, the name of the decedent under whose will such trust was established and if there be more than one trust under such will, the number of the paragraph thereof establishing such trust or other appropriate identification; in the case of an investment in behalf of any other trust, the name of the grantor, donor, trustor or creator of the trust and the date of the instrument creating or defining such trust; in the case of every other investment in behalf of any other fund, such description thereof as will reasonably identify the same.

12. After filing such petition the petitioner shall cause to be issued by the court in which the petition is filed and shall publish not less than once in each week for four successive weeks in a newspaper to be designated by the court a notice or citation addressed generally without naming them to all parties interested in such common trust fund and in such estates, trusts or funds mentioned in the petition, all of which may be described in the notice or citation

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only in the manner set forth in said petition and without setting forth the residence of any such decedent or donor of any such estate, trust or fund. Such notice or citation shall include the name of each person acting with the trust company in a fiduciary capacity with respect to each such estate, trust or fund. Such notice or citation shall require all such parties to show cause on a day to be fixed by the court why such account should not be judicially settled. Upon the filing of such petition the court shall appoint two competent and responsible persons, one to appear as special guardian and attorney for each infant not appearing by his general guardian and to appear for each lunatic, idiot, habitual drunkard or other incompetent not appearing by a committee and to appear for each other party known or unknown who does not otherwise appear in such proceeding who has or who may thereafter have any interest in the income of such common trust fund, and the other of such competent and responsible persons to appear as special guardian and attorney for each infant not appearing by his general guardian and to appear for each idiot, lunatic, habitual drunkard or other incompetent not appearing by a committee and to appear for each other party known or unknown who does not otherwise appear in such proceeding who has or may thereafter have any interest in the principal or capital or such common trust fund. In any such accounting proceeding the notice or citation hereinabove prescribed shall be deemed sufficient notice to each party known or unknown having or who may thereafter have any interest in an estate, trust or fund any part of which shall have been invested in such common trust fund and each such person so interested may appear in such accounting proceeding and on his failure to appear shall be deemed to be represented in such proceeding by the person designated respectively as such guardian and attorney.

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14. Except as otherwise herein provided, such proceeding shall be conducted in the same manner as any other proceeding for the voluntary judicial settlement of the account of an executor, administrator, guardian or testamentary trustee. Subject to the limitations set forth in subdivision nine hereof the decree in such proceeding unless reversed or modified on appeal shall be thereafter binding and conclusive in respect of any matter set forth in the account settled by such decree in all courts upon all parties having or who may thereafter have any interest in such common trust fund or in any estate, trust or fund held by such trust company either alone or in conjunction with another or others.

15. In any action or proceeding for the judicial settlement of the account of proceedings of any such trust company or any such trust company and one or more other persons acting in conjunction with it in any fiduciary capacity in respect of any estate, trust or fund the whole or any part of which shall have been invested in such a common trust fund, it shall be sufficient to set forth in such account the amount of such estate, trust or fund invested in such common trust fund and the amounts thereafter received for such estate, trust or fund from such common trust fund and the interest, if any, retained in such common trust fund together with a reference to all accounts with respect to such common trust fund so filed and judicially settled as hereinbefore provided covering the period of all such investments. A judgment or decree judicially settling the account of proceedings of a trust company in any fiduciary capacity when acting either alone or with one or more others with respect of any estate, trust or fund the whole or any part of which shall have been invested in a common trust fund shall not preclude any party interested therein, upon the next judicial settlement of the

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account of the proceedings of said trust company with respect to such common trust fund, from questioning and objecting to any action or proceeding taken or omitted by such trust company with respect to such common trust fund after the last date covered by the last previously judicially settled account of such trust company with respect to such common trust fund and up to and including the time when the share or interest of such estate, trust or fund in such common trust fund shall have been wholly withdrawn therefrom.